A

GNASOTHY NADARAJAH

v.

DR MANOHARAN MUTHUTHAMBY

B

COURT OF APPEAL, PUTRAJAYA
MOKHTAR SIDIN JCA
ALAUDDIN MOHD SHERIFF JCA
VINCENT NG J
[CIVIL APPEAL NO: M-02-44-2000]
C 6 MARCH 2007

FAMILY LAW: *Divorce - Maintenance - Wife and child - Appeal against award of maintenance - Lump sum payment - Increase in maintenance - Whether trial judge exercised his discretion correctly*

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This was an appeal by the respondent and a cross-appeal by the petitioner against the decision of the learned trial judge in respect of the maintenance of the respondent and their child. The petitioner had filed the present petition against the respondent for divorce and both parties had, subsequently, mutually agreed to E dissolve the marriage and that custody of the child be given to the respondent. This appeal primarily concerned the respondent's dissatisfaction with the learned judge's decision in respect of the maintenance awarded to her and the child, in particular his refusal to award her the one lump sum payment she prayed for. The F respondent contended that the learned judge should exercise his discretion and order the petitioner to make a lump sum payment of maintenance. She also requested that the amount of the periodical payment of maintenance be increased from RM1,950 a month to RM4,000 a month.

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Held (dismissing the appeal and the cross-appeal)

Per Mokhtar Sidin JCA delivering the judgment of the court:

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(1) In his written judgment, the learned judge had considered most of the relevant authorities and had come to the conclusion that in the interest of all parties he would not order a lump sum payment of maintenance in the present case. There was no error in this decision. The authorities show that I one lump sum payment awards are only made in exceptional cases. In this instance, the learned judge had clearly taken into consideration the individual circumstances of the parties,

particularly the needs of the respondent and the obligations and responsibilities of the petitioner, the assets of the parties and the earning capacity of the petitioner, and had exercised his discretion correctly. From the facts, it was clear that the learned judge, in awarding the sum of RM1,950 as maintenance for the child and the respondent, had considered the needs of the child and the respondent and also the ability of the petitioner to make the monthly payments. Thus, for the reasons stated, the learned judge's decision was fair and reasonable. (paras 11, 12 & 14)

Bahasa Malaysia *translation of headnotes*

Ini adalah rayuan oleh responden dan rayuan balas oleh pempetisyen terhadap keputusan yang arif hakim bicara mengenai nafkah responden dan anaknya. Pempetisyen telah memfail petisyen terhadap responden untuk perintah perceraian, dan kedua-dua pihak kemudian bersetuju untuk membubarkan perkahwinan dan menyerahkan jagaan anak mereka kepada responden. Rayuan secara pentingnya adalah menyentuhi ketidakpuasan hati responden terhadap award nafkah yang diberi oleh yang arif hakim, terutama atas keengganannya mengawardkan suatu jumlah pukal seperti yang dipohon responden. Responden berhujah bahawa yang arif hakim sepatutnya menggunakan budibicaranya memerintahkan pempetisyen membayar satu jumlah pukal nafkah. Beliau juga memohon supaya bayaran RM1,950 sebulan yang dibenarkan dinaikkan kepada RM4,000 sebulan.

Diputuskan (menolak rayuan dan rayuan balas)

Oleh Mokhtar Sidin HMR menyampaikan penghakiman mahkamah:

(1) Dalam penghakiman bertulisnya, yang arif hakim telah mempertimbang sebahagian besar autoriti dan telah mencapai keputusan bahawa untuk manfaat kedua-dua pihak beliau tidak akan memerintahkan pembayaran nafkah secara pukal. Tiada apa salahnya perintah ini. Autoriti-auroriti menunjukkan bahawa perintah pembayaran secara pukal hanya dibenarkan dalam kes-kes tertentu sahaja. Dalam kes ini, yang arif hakim telah mengambilkira halkeadaan masing-masing pihak, terutama keperluan responden dan obligasi dan tanggungjawab pempetisyen, aset-aset pihak-pihak dan tahap pendapatan pempetisyen, dan telah melaksanakan budibicaranya dengan

A betul. Berdasarkan fakta, yang arif hakim, dalam mengawardkan RM1,950 sebagai nafkah si anak dan responden, telah mengambilkira keperluan-keperluan mereka serta kemampuan pempetisyen untuk membuat bayaran bulanan tersebut. Keputusan yang arif hakim adalah satu keputusan yang adil dan
B munasabah.

Case(s) referred to:
C v. V (No 2) [1999] 1 AMR 1126 ***(refd)***
Doris Howell v. Pui Jin Kong & Anor [1999] 1 AMR 476 ***(refd)***
Lee Puey Hwa v. Tay Cheow Seng [1991] 3 CLJ 2703; [1991] 4 CLJ (Rep) 545 CA ***(refd)***
C
Leow Kooi Wah v. Philip Ng Kok Seng [1997] 2 AMR 2108 ***(refd)***
Sivanes Rajaratnam v. Usha Rani Subramaniam [2002] 3 CLJ 300 CA ***(refd)***

D *For the appellant - Hillary D'cruz; M/s SK Khoo & Tan Tian Tiok*
For the respondent - Pang Hok Leong; M/s Balwant Singh Sidhu & Co

[Appeal from High Court, Melaka; Divorce Petition No: 33-102-1998]

Reported by Suresh Nathan

E

JUDGMENT

Mokhtar Sidin JCA:

F **[1]** The appellant was the respondent in the court below and the respondent was the petitioner. Being dissatisfied with the decision of the court below the appellant appealed. The respondent also cross-appealed against that decision. I will refer to the parties as they were in the court below.
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[2] The petitioner filed the present petition against the respondent for divorce seeking the following prayers:

(i) that the said marriage may be dissolved;

H (ii) that the respondent be granted custody, care and control and guardianship of the child, Savin a/l Manoharan with unlimited access to the petitioner;

(iii) that the said child is to stay with the petitioner on alternate
I weekends and public holidays. And for every Tuesday and Thursday, the said child is to stay with the petitioner for three (3) hours from 5.30pm to 8.30pm;

(iv) that the said child is also to stay with the petitioner for half of the school holidays;

(v) that the petitioner is to pay maintenance to the respondent for the sum of RM800 per month and to the said child for the sum of RM1,200 per month until he attains the age of 18 years;

(vi) that the respondent and the said child shall continue to live in the matrimonial home. Both the petitioner and the respondent shall hold the said house on trust in favour of the said child and the same shall be transferred to him when he attains the age of majority;

(vii) that the respondent be provided with a Proton Iswara and all petrol and car maintenance bills to be the sole responsibility of the respondent;

(viii) that each party to pay its own costs;

(ix) liberty to apply.

[3] The petitioner and the respondent were married on 31 October 1982. The parties cohabited at No. 4576-C, Jalan Penghulu Abbas, Bukit Baru, Melaka. There is one child of the marriage born on 16 November 1989, a boy by the name of Savin a/l Manoharan. The petitioner claimed that the respondent had behaved in such a way that the petitioner could not reasonably be expected to live with the respondent. The complaints by the respondent against the appellant are:

(1) Throughout the marriage the respondent refused to work and cook for the family.

(2) The respondent did not even sit and eat together with the petitioner.

(3) The petitioner had to heat up the food himself after a tired day's work.

(4) There was no family atmosphere at all when the petitioner came back from work.

(5) They never had a nice family dinner together.

(6) The respondent did not treat the family as a closely-knit family.

(7) Throughout the marriage, the respondent refused to go out with the petitioner even invited to by him, like going out for a quiet dinner together.

(8) But when the petitioner came back from social evenings, the respondent became very jealous and hurled all kinds of verbal abuses at him.

(9) Throughout the marriage, the respondent went to bed at 8.30pm thus mentally tortured and sexually depraved.

(10) The petitioner lost his right to consortium of the respondent.

(11) The petitioner claimed that the atmosphere at home was a vacuum as though the petitioner was still a bachelor living on his own without a family.

(12) Sometime in 1994, the petitioner kept on receiving anonymous letters accusing and abusing the petitioner.

(13) The petitioner found out that the letters were actually written and sent by the respondent, just to torture the petitioner mentally.

(14) In 1995, the petitioner found his cash kept on missing.

(15) The respondent pointed an accusing finger at the housemaid and as a result of that the petitioner took the maid to the police station which the maid denied vigorously.

(16) The petitioner then decided to lay a trap and the petitioner found that it was the respondent who had been stealing the cash.

(17) In January 1996, an attempted reconciliation meeting was held at the respondent's family home in Kuala Lumpur and at that meeting the respondent's mother confirmed that the respondent had been stealing cash for many years and she justified it by saying "if a wife cannot steal from her own husband who else can she steal from".

(18) The respondent refused to go to work even though she had obtained a degree in accountancy. The petitioner claimed that the respondent obtained the degree just to please her parents.

(19) Due to the respondent's continuous intolerable behaviour, the petitioner left the matrimonial home sometime in August 1996.

(20) Sometime in November 1997, the petitioner suffered a heart attack due to the constant matrimonial pressure and stress. The petitioner underwent a cardiac surgical procedure called Angio-Plasty in the same month and had been advised to lead a less stressful life.

(21) The petitioner and the respondent had been living apart for a continuous period of at least two years before the application was made.

[4] The respondent in her reply agreed that the marriage has broken down irretrievably but blamed it on the petitioner on the following grounds:

(1) The respondent blamed the petitioner that she had to give up a promising job as an accountant.

(2) She stated that the problems in the marriage initially arose when the petitioner started to associate himself with different women and the respondent rightly reacted by not participating in his social activities as they would have proved to be a source of acute embarrassment since his womanizing habits were known to most of their mutual friends.

(3) The respondent denied about the cash thefts and anonymous letters.

(4) The respondent also alleged that the failure of the marriage has been the philandering habits of the petitioner who appeared to have formed a permanent association with a female Chinese.

(5) The respondent further claimed that the petitioner continued to disturb her privacy at the home he abandoned.

The respondent also prayed for the marriage to be dissolved and prayed for the following orders:

(a) the respondent be given custody, care, control and guardianship of the child of the marriage, Savin a/l Manoharan, with reasonable access to the petitioner;

(b) that the petitioner pays her a sum of RM2,000 per month (payable before the 5th day of each month) for the maintenance of the said child until he attains the age of 18 years;

(c) that the half-share of the petitioner in the matrimonial home be transferred to the respondent who shall hold the same in trust for the said child until he attains the age of majority;

(d) that instead of alimony the respondent be paid by way of cash settlement a lump sum of RM2,000,000 out of the considerable assets of the petitioner;

(e) that the petitioner be made to pay all the costs of the petition.

[5] The petitioner gave a reply to the allegations made by the respondent and we feel that it was not necessary to state them here since the parties had mutually agreed to dissolve the marriage. Anyway, the petitioner claimed that the respondent has more assets than the petitioner and on that premises, a lump sum payment is most inappropriate. The petitioner also expressed his concern that the respondent began to expose the said child to Christian teachings which is contrary to the boy's faith as he was born a Hindu. The petitioner also stated that he is agreeable to allow the respondent to have custody of the said child but is not agreeable to surrender guardianship of the said child to the respondent.

[6] The learned trial judge stated in his judgment that before the hearing the parties had already agreed to the following:

(a) The marriage be dissolved.

(b) Custody of the said child be given to the respondent.

(c) The respondent would be given the right to stay in the matrimonial home.

(c) The matrimonial home be transferred to the respondent on condition that a trust deed be executed that the said matrimonial home be transferred to the said child when he reaches the age of majority.

The issues to be decided by the learned judge were: A

(a) Guardianship.

(b) Monthly maintenance or "one lump sum payment".

The learned judge in his judgment then made the following orders: B

(a) The custody and guardianship of the said child be given to the respondent on condition that the said child should not be taken out of Peninsular Malaysia without the consent of both parties. C

(b) The petitioner be given the right to take the said child on every Friday at 5.30pm and to be sent back to the respondent at 8pm.

(c) The petitioner be given the right to having the child every D fortnight whereby the petitioner is to fetch the said child at 9am on Saturday and to return the said child to the respondent at 8pm.

(d) School holidays: During the first half the said child is to stay E with the petitioner while the second half the said child is to stay with the respondent.

(e) Maintenance for the respondent is RM1,200 per month and the said child is RM450 per month. In addition the petitioner F is to pay the respondent the sum of RM300 per month for maid and gardener. All the monthly payments should be made by way of Standing Instruction, from petitioner's bank to the respondent's bank.

(f) The petitioner is to bear all fees and expenses in respect of G the said child's education until university level.

(g) The petitioner is to pay all medical expenses in respect of the said child until he attains the age of majority.

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(h) The petitioner is to pay land and rent assessments of the matrimonial home until the said property is transferred into the name of the said child.

(i) The petitioner is to transfer the Proton Iswara car to the I respondent.

(j) The petitioner is to pay the costs of this petition.

[7] The respondent being unhappy with the learned judge's decision in respect of the maintenance awarded to her and the said child appealed to this court, in particular the learned judge's refusal to award her the one lump sum payment of maintenance as prayed by her. The petitioner was also unhappy with the maintenance awarded by the learned judge to the respondent.

[8] The respondent (appellant) contended that the learned judge was in error for not allowing one lump sum payment of maintenance. As can be seen from the records, in the court below, the respondent gave the following reasons for making that request. Firstly, she wanted a "clean break" in her relationship with the petitioner. Secondly, the petitioner was normally late in paying the interim monthly maintenance of RM2,500 for her and the said child as awarded by the court. In his reply, the petitioner explained that the delay was due to the fact that he had to send the monthly cheque to his solicitors in Segamat and the solicitors in turn had to send the cheque to the respondent's solicitors in Melaka. Thirdly, the respondent stated that the monthly payment was normally spent in full within that month. If one lump sum payment is ordered than she could deposit the money with the bank as fixed deposit and then earn interest at the rate of 6% p.a. and that would be enough for her and the said child's subsistence without affecting the RM2 million. The respondent also prayed for the maintenance and the obligations be increased.

[9] In his judgment the learned judge stated:

> Saya dapati juga di dalam kes ini tidak akan berlaku "clean break" yang dihajati Responden kerana anak mereka akan berulang alik antara Pempetisyen (bapa) dan Responden (emak). Hubungan melalui anak di antara kedua-duanya tetap berpanjangan.
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> Saya mengakui bahawa bayaran sekaligus banyak faedahnya. Di dalam buku *'Bromley's Family Law* – Ninth Edition by Nigel Lowe & Gillian Douglas' di m.s. 791, penulis menulis:
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> > However, the most important use of this statutory power is to adjust the parties capital assets. If, for example, the husband owns shares, the court may wish the benefit of a proportion of these to be given to the wife. It may do this directly by ordering them to be transferred to her, but it may alternatively order him to make a lump sum payment to her … When the matrimonial home is the only capital asset and it is sold or the wife leaves and the husband remains, the court will commonly make an order for the

> payment of a lump sum representing the value of that part of the assets of which the other party is to be given the benefit.

Penulis buku tersebut seterusnya mengatakan di m.s. 792:

> It is … true that an order will not be made if the consequence would deprive the payer of his livelihood, eg, if a partner would have to realise his share of the partnerships. Nor is a lump sum appropriate where the payer's wealth is locked up in assets which cannot readily be sold to raise capital … But given these restrictions a lump sum will be ordered whenever it is more valuable to the payee than periodical payments, and it is impossible to lay down hard and fast rules.

Berdasarkan garisan panduan yang dipetik dari kekerapan keputusan mahkamah di England, saya mengkaji aset atas nama pempetisyen yang diperolehi semasa perkahwinan walaupun pempetisyen tidak cukup jujur semasa mengikrar afidavitnya di (20).

Aset yang diikrar dan yang timbul dari keterangan di mahkamah ialah rumah kediaman, rumah kedai, (milikan bersama), di mana pempetisyen mengamal kedoktoran, saham dalam syarikat yang tidak aktif, dan kereta-kereta antik. Pempetisyen tidak menerangkan sama sekali dari mana ia memperolehi lebih RM214,000.00 untuk mengubahsuai rumah kediaman, membeli dan kemudian menjual Pub dan Restaurant, membeli hartanah untuk dijadikan modal dalam Syarikat Aerofair dan membeli kereta-kereta antik yang dikatakan oleh responden, dan tidak dinafikan pempetisyen, bernilai RM200,000.00. Malahan keterangan-keterangan aset-asetnya mirip kepada pendapat saya bahawa pempetisyen bergaji lebih dari RM10,000.00 sebulan.

Di dalam kes ini, rumah kediaman akan dipindahmilik kepada nama pempetisyen dengan ikatan amanah bahawa rumah kediaman itu akan menjadi milik anak mereka. Responden dapat menggunakan rumah itu sepenuhnya dengan anak mereka tanpa pempetisyen.

Jika rumah-rumah kedai itu dijual, maka ia akan merampas punca rezeki pempetisyen. Saya juga berpendapat bahawa saham-saham yang dimilikinya berpotensi tetapi menjualnya pada masa ini mungkin tidak berapa bernilai. Begitu juga dengan kereta-kereta antiknya. Kereta-kereta ini akan bernilai apabila ada peminat yang

sungguh-sungguh berminat dengan kereta antik yang dicari peminat itu.

Di dalam buku Bromley ia mengatakan bahawa "Normally a lump sum payment should not be regarded as the capitalisation of periodical payment, but rather as a separate provision on its own". Sementara itu ada pendapat yang mengatakan bahawa "capitalised maintenance has taken the place of secured periodical payments".

Saya ingatkan diri saya bahawa situasi di England berlainan dari Malaysia. Di sana peruntukan bayaran sekaligus dibolehkan melalui peruntukan statutori. Peruntukan di Malaysia di s. 79 Law Reform (Marriage and Divorce) Act, 1976 (Akta 1976) berbunyi:

> The court may in its discretion when awarding maintenance order the person liable to pay such maintenance to secure the whole or any part of it by vesting any property in trustees upon trust to pay such maintenance or part thereof …

Sementara s. 80 Akta yang sama berbunyi:

> An agreement for the payment, in money as other property, of a capital sum in settlement of all future claims to maintenance, shall not be effective until it has been approved … by the court …

Di dalam kes *C v. V (No. 2)* [1999] AMR 1726 *(C v.V)*, YA Kamalanathan Ratnam, memutuskan di m.s. 1130, garisan 20-25:

> … I order that upon receipt of his gratuity from the Government the petitioner is to pay the respondent a lump sum of RM10,000.00 as a full and final payment of maintenance. It is only proper that I make a "clean break" order since both parties are at retiring age …

Sementara Y.A. Mahadev Shanker, pada masa itu, di dalam kes *Leow Kooi Wah v. Ng Kok Seng Philip* AMR [1995] MLJ 852 di keputusan (2) berkata:

> Although there is no provision in the Law Reform (Marriage and Divorce) Act, 1976 (the Act) which expressly permits a lump sum payment in addition to maintenance s. 80 covers the situation where the parties may agree to the payment of a lump sum in cash or kind *in lieu* of periodic payments subject to court approval. In the absence of agreement, the court has the power by s. 79 of the Act to order security for maintenance by vesting property in trust to pay such maintenance.

Berdasarkan kepada peruntukan di bawah s. 79, Akta 1976 dan s. 80, Akta 1976, saya berpendapat tidak ada peruntukan di bawah Akta untuk memerintahkan bayaran sekaligus kecuali ada persetujuan kedua-dua pihak dan diluluskan mahkamah ataupun meletak hak harta benda dengan ikatan amanah.

[10] From the above passages, it is clear to us that the learned judge had considered in full the request of one lump payment for maintenance by the respondent and had also taken into consideration the authorities cited to him. The learned judge then decided not to exercise his discretion to award one lump payment as requested by the respondent. The learned judge had given his reasons for doing so. The learned judge took the view that there was no provision under the Law Reform (Marriage and Divorce) Act 1976 to order a lump sum payment unless it was agreed by the parties and approved by the court.

[11] Before us, learned counsel for the respondent contended that the learned judge should exercise his discretion to order the petitioner to make one lump sum payment of maintenance as decided in *Lee Puey Hwa @ Lee Poi Wah v. Tay Cheow Seng @ Tay Chow Seng* [1991] 3 CLJ 2703; [1991] 4 CLJ (Rep) 545, *Leow Kooi Wah (p) v. Philip Ng Kok Seng* [1997] 2 AMR 2108, *Doris Howell v. Pui Jin Kong & Anor* [1999] 1 AMR 476, *C v. V (No. 2)* [1999] 1 AMR 1126 and *Sivanes Rajaratnam v. Usha Rani Subramaniam* [2002] 3 CLJ 300. We observed that in his written judgment the learned judge had considered if not all but most of the authorities cited and he came to the conclusion that in the interest of all parties he would not order a one lump sum payment of maintenance in the present case. We could not find any error in the learned judge's refusal to award one lump sum payment of maintenance. In our view, the authorities show that one lump sum payment award is only made in exceptional cases as shown in the authorities. We would like to refer to *Lee Puey Hwa @ Lee Poi Wah v. Tay Cheow Seng @ Tay Chow Seng (supra)* a decision of the Court of Appeal in Singapore. As can be seen the provisions of the Singapore law in respect of one lump sum payment is similar to ours. In that case the respondent husband T was granted a *decree nisi* on 4 September 1985 and the order was made absolute on 23 December 1985. On 16 August 1985 the appellant wife L, obtained an order for T to pay her $1,000 per month pending the hearing of the petition. On 6 November 1987, the figure was increased by the court to $1,400 and it was further ordered that the house in which the appellant and their daughter

were living was to be transferred to the appellant and the daughter as tenants-in-common in equal shares. On 28 March 1989, the figure was increased to $1,800, however T was relieved from his previous liabilities for the outgoings of the house. L appealed against the maintenance order of $1,800 and against the learned judge's refusal to exercise his discretion to grant L a lump sum. Yong Pung How CJ, delivering the judgment of the court at pp. 2705-2706 said:

> A divorce puts an end to a marital relationship. Although in practice, questions of custody of children and access to them, division of matrimonial assets, and arrangements for maintenance, often force on the parties a residual relationship, there is every advantage to both parties to put a final end to this relationship and to achieve a clean break as soon as this is practicable: *Minton v. Minton* [1979] AC 593. In so far as maintenance of a spouse is concerned, the court's power to order a lump sum payment, as an alternative to periodical payments, makes it possible for a husband, who has the means to make a lump sum payment, to achieve a clean break, and is clearly a method which should be taken advantage of whenever this is feasible. In deciding whether to order a lump sum payment, the court should consider the individual circumstances of the parties, particularly the needs of the wife and the obligations and responsibilities of the husband, in addition to his assets, his earning capacity and other available resources. In any case, an order for a lump sum should not be made if the husband does not have adequate cash or other capital assets which can be readily disposed of, or if the lump sum payment or the disposal of assets will effectively cripple his earning power.
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> Even where a lump sum payment is considered, the making of the lump sum order is pre-eminently a matter of discretion for the judge hearing the application and a Court of Appeal will not interfere with an order made by a judge unless it is clear that the judge exercised his discretion on a wrong principle or, in exercising his discretion, he made a decision which is improper, unjust or wrong. In the present case, the learned judge noted that the appellant was asking for one-third of the "capital worth" of the petitioner which she claimed was about $2.281 million and, in other words, was asking that the respondent be ordered to pay her $760,347 as a lump sum. He noted that the appellant already had a half share in No. 14 Clover Way which was valued at $370,000, the other half share being vested in her daughter and that in addition she was receiving a periodical payment. As to the respondent's other assets, he expressed the following views, with which we are in agreement:

> The (respondent's) wealth was largely inherited and his own acquisitions were achieved in the course of his professional practice, with considerable help from the party cited during a period when his marriage to the (appellant) was over to all intents and purposes. Further, his inheritance in the form of the shares in the private companies are all not easily realizable.
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> Accordingly, the learned judge was not prepared to exercise his discretion under s. 109(1) but, being anxious to secure the payment of maintenance to the appellant, used the powers conferred on him by s. 109(2) to order that the respondent should hold the income of all shares in the private companies as a trustee upon trust to pay the maintenance ordered. We are satisfied that in the present case the learned judge took into account all relevant considerations before deciding not to make a lump sum order, and that his decision was correct.

[12] The learned trial judge in his judgment had clearly taken into consideration the individual circumstances of the parties, particularly the needs of the wife and the obligations and responsibilities of the husband, the assets of the parties and the earning capacity of the petitioner. We are of the view that he had exercised his discretion correctly and for that we will not disturb his decision in respect of this.

[13] The other issue raised by the respondent in this appeal, which is also the issue raised by the petitioner in his cross-appeal is the amount of periodical payment of maintenance which the learned judge fixed at RM1,950 (RM1,200,00 for the respondent, RM450 for the said child and RM300 for maid and gardener) per month to be paid to the respondent. The respondent requested the sum to be increased to RM4,000 a month for her and the said child's maintenance. To justify the increase the respondent gave the breakdown of the figures which could be seen in the judgment of the learned judge and there is no necessity to repeat them here. The petitioner, on the other hand, submitted that he could only afford to pay the sum of RM2,000 a month taking into consideration his financial means and commitments. The petitioner added that the respondent was the cause of the breakdown of the marriage. The petitioner's counsel further submitted that the learned judge had taken into consideration all factors and had made a reasonable award of maintenance to the respondent. The learned judge in his judgment stated as follows:

Yang tinggal ialah nafkah responden dan anak mereka. Pada pendapat saya, saya dapati kedua-dua pihak sayangkan anak mereka. Pempetisyen telah bersetuju membiayai pelajaran anaknya sehingga ke universiti. Dengan persetujuan ini, saya berpendapat adalah sesuai pempetisyen membiayai semua perbelanjaan persekolahan anak mereka yang terdiri dari kos pakaian, buku-buku teks dan buku-buku tambahan, tambang pergi dan balik dari sekolah, tuisyen dan lain-lain perbelanjaan persekolahan yang berpatutan. Pembelanjaan ini akan dibayar melalui tuntutan bulanan. Selain dari itu, saya juga memerintahkan supaya pempetisyen membayar semua kos kecemasan dan perubatan anak itu.

Bagi kos makanan, saya dapati jumlah RM450.00 sebulan untuk anak itu adalah mencukupi memandangkan responden akan makan bersama anaknya.

Nafkah ibunya menimbulkan banyak isu dalaman yang perlu di selesaikan. S. 78, Akta 1976 hendakkan mahkamah di dalam menilai nafkah berasaskan kepada "means and needs" (kemampuan dan keperluan) kedua-dua pihak. Di dalam kes *Ching Leng Woah* di atas, Mahkamah Rayuan telah memutuskan di keputusan 3(a) ayat terakhir:

> .... Selama mana perkahwinan itu masih wujud, aset tersebut, termasuk kebolehan menyara diri masing-masing, adalah aset 'matrimonial'.

Di dalam kes ini, responden mempunyai kelayakan yang sesuai sekurang-kurangnya menjadi akauntan tidak bertauliah. Ataupun ia mampu menjadi pensyarah atau tutor dalam bidang yang berkaitan dengan kelulusannya. Ini bermakna ia berkemampuan menyara hidupnya jika ia hendak dan sanggup berusaha. Responden masih muda dan saya percaya ia boleh menyesuaikan diri dengan hakikat hidup.

Tanggungan nafkah berdasarkan kepada "... to try and place the parties, so far as it may be practicable, in the financial position in which they would have been if the marriage had not broken down ..." kes *C v. V* di atas.

Dalam tempoh perkahwinan, responden ada pembantu rumah dan tukang kebun. Memandangkan keadaan di Melaka, saya perintahkan jumlah RM300.00 sebulan dibayar kepada responden oleh pempetisyen untuk pembantu rumah dan tukang kebun. Bayaran akan dihentikan jika responden berkahwin ataupun meninggalkan rumah dan/atau tidak lagi menjaga anak mereka.

Saya tidak bersetuju bahawa responden perlu membeli pakaian di butik di Kuala Lumpur ataupun bercuti seberang laut tiap-tiap tahun. Bercuti di seberang laut berlaku enam kali saja dalam tempoh perkahwinan dan membeli pakaian di butik timbul selepas perpisahan. Responden mempunyai kelulusan untuk berkerja dan mampu menambah kualiti hidupnya dengan membeli pakaian dari butik atau bercuti ke seberang laut.

...

Bagi makan dan minum dan juga keperluan lain, saya perintahkan pempetisyen membayar RM1,200.00 sebulan kepada responden. Bayaran bulanan ini, bayaran gaji pembantu rumah dan tukang kebun dan menyara hidup anak hendaklah dilakukan secara "Standing Instructions" dari bank pempetisyen kepada akaun bank responden tidak lewat dari hari ke 7 tiap-tiap bulan.

[14] From the above passages, it is clear to us that the learned trial judge in awarding the sum of RM1,950 as maintenance for the said child and the respondent had considered the needs of the said child and the respondent and also the ability of the petitioner to make the monthly payments. The petitioner conceded that the award for maintenance was reasonable which we take to mean that he was not proceeding with the cross-appeal. For the reasons we have stated, we find that the learned judge's decision was fair and reasonable and we will not disturb it.

[15] In view of what we have stated above, we find that there is no merit in the appeal by the respondent and the cross-appeal by the petitioner. The appeal and the cross-appeal is hereby dismissed. Each party bears its own costs. The decision of the learned trial judge is hereby affirmed. The deposit is to be refunded.